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Cases, Regulations, and Statutes

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property was placed in service in the year it was first rented and that determined the classification for cost recovery purposes.[16] The court noted that if the structure had been placed in service before 1987, the cost recovery period would have been 10-years.[17] In a footnote, the court stated that had the structure been placed in service before 1987, the property would have been depreciated out by 1996, the tax year under review by the Tax Court.[18]

What if not permanently installed?

The Tax Court, in *Rupert v. Comm'r*,[19] understandably did not take up the question of whether the classification result under MACRS would have been the same had the mobile home not been installed permanently on the lake site. Had it not been so installed, the question is whether the mobile home would be deemed a "building or structure" which is required for the property to be classified as "residential rental property."[20] If it were not so classified, the property might well be deemed seven-year property on the basis that it "does not have a class life."[21]

FOOTNOTES

1 See Harl, "Depreciating the Residence," 12 *Agr. L. Dig.* 25 (2001). See generally, 4 Harl, *Agricultural Law* § 29.05[2][d][i][G] (2001); Harl, *Agricultural Law Manual* § 4.03[4][c][7] (2001).

2 See I.R.C. §§ 168, 168(e)(2)(A).

3 Rupert v. Comm'r, T.C. Memo. 2001-179.

4 I.R.C. § 168(e)(2)(A).

5 I.R.C. § 168(e)(2)(A)(i).

6 I.R.C. § 168(e)(2)(A)(ii)(I).

7 I.R.C. § 168(e)(2)(A)(ii)(II). See Harl, "Depreciating the Residence," 12 *Agr. L. Dig.* 25 (2001).

8 I.R.C. § 168, before amendment by the Tax Reform Act of 1986, Pub. L. No. 99-514, § 203(a), 100 Stat. 2126 (1986).

9 I.R.C. § 168(h)(3).

10 T.C. Memo. 2001-179.

11 *Id*.

12 *Id*.

13 See I.R.C. § 168(h)(3), before amendment by Tax Reform Act of 1986, Pub. L. No. 99-514, § 203(a), 100 Stat. 2126 (1986).

14 Rupert v. Comm'r, T.C. Memo. 2001-179.

15 I.R.C. § 168(e)(2)(A).

16 Rupert v. Comm'r, T.C. Memo. 2001-179.

17 *Id*.

18 *Id.*, footnote 6.

19 T.C. Memo. 2001-179.

20 I.R.C. § 168(e)(2)(A)(i).

21 I.R.C. § 168(e)(2)(C)(ii)(I). See Rev. Proc. 87-56, 1987-2 C.B. 674 (list of ADR class lives).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

AVOIDABLE LIENS. The debtors were farmers and claimed two pickup trucks as exempt under the Oklahoma exemptions for implements of husbandry and tools of the trade, Okla. Stat. Tit. 31, §§ 1(A)(5), (6). The debtors sought to avoid secured liens on the pickups as impairing the exemptions. The secured creditor had not filed any objection to the exemptions for the pickups and the debtor argued that the failure to object prevented any objection to the lien avoidance request. The court held that, because secured creditors do no need to file claims and objections and secured liens pass through bankruptcy, unless avoided, the creditor could resist the avoidance action even though no exemption objection was made. The court held that the creditors failed to demonstrate that the pickups were not used as tools in the debtors' farming business; therefore, the pickups were exempt tools of the trade and the liens against the trucks were avoidable. ***In re* Thompson, 263 B.R. 134 (Bankr. W.D. Okla. 2001)**.

EXEMPTIONS

HOMESTEAD. The debtors owned a rural residence on one parcel of land and three rental houses on three separate rural parcels of land. The debtors claimed all four properties as exempt rural residences under Tex. Const. Art XVI, § 51. The trustee argued that the three rental properties were not eligible for the exemption because the properties were not used by the debtors as a rural home. The court noted that separate parcels of farm land have been held to be included in the rural homestead, based upon the close connection between the operation of the farm and the use of the residence. However, the court held that mere use of income from separate parcels as support for the residence was not sufficient connection to include residential rental properties within the exempt rural homestead; therefore, the three rental properties were not eligible for the exemption. ***In re* Webb, 263 B.R. 788 (Bankr. W.D. Tex. 2001)**.

FEDERAL TAX-*ALM* § 13.03[7].*

ADMINISTRATIVE EXPENSES. Under I.R.C. § 67(e), deductions for costs paid or incurred in connection with the administration of an estate or trust that would not have been incurred if the property were not held in such trust or estate shall be treated as allowable in arriving at adjusted gross income. The IRS ruled that Section 67(e) applied to the deductible administrative expenses of bankruptcy estates. **Ltr. Rul. 200136004, May 17, 2001**.

DISMISSAL. The debtor filed for Chapter 13 and the plan provided for payment of all nondischargeable taxes. During the three year plan the debtor made all the payments but failed to file and pay taxes for the three years of the plan.

The plan had a provision prohibiting the debtor from acquiring new debt during the plan and the IRS argued that the debtor's failure to pay the post-petition taxes violated that plan provision and required the dismissal of the case. The court held that, once all plan payments have been made, the court is required to grant a discharge. The court noted that there is now a standing order requiring all debtors to file and pay income taxes and that, if the IRS objection had been made before all plan payments were made, the dismissal would have been granted. ***In re* Parffrey, 264 B.R. 409 (Bankr. S.D. Tex. 2001)**.

POST-PETITION INTEREST. The debtors had filed for Chapter 11 and their plan provided for payment of all secured and unsecured priority tax claims. During the plan, payments were made to the IRS in excess of the required payments and the debtors sought the return of the excess payments. The court initially held that the overpayments were a refund due to the debtors, see *In re Matunas, 261 B.R. 129 (Bankr. D. N.J. 2001)*, but the IRS sought a designation of the excess as an overpayment in order to offset the excess against the post-petition interest owed by the debtors. The court held that the IRS was entitled to the post-petition, pre-confirmation interest as a personal liability of the debtors, as contrasted to a bankruptcy estate liability. The court held that the excess payments were best classified as overpayments and could be used by the IRS to offset the debtors' post-petition interest liability. ***In re* Matunas, 264 B.R. 365 (Bankr. D. N.J. 2001)**.

CONTRACTS

POULTRY PRODUCTION CONTRACTS. The plaintiffs were farmers who had entered into broiler chicken production contracts with the defendant. Under the contracts, the plaintiffs were to construct, equip and operate poultry barns in return for the defendant's agreement to regularly place newborn chicks in the barns. The defendant terminated the contracts after closing the nearby processing plant. The plaintiffs claimed that the termination of the contracts was without cause and brought suit alleging breach of contract, fraudulent inducement and misrepresentation, breach of the covenant of good faith and fair dealing, violation of Minn. Stat. § 17.92, and various other claims. The plaintiffs alleged that the defendant made several oral promises that the contracts would be terminated only for cause. The court held that no evidence of the oral promises was admissable because the contracts were unambiguous as to termination; thus, the actions for fraudulent inducement and misrepresentation were dismissed. The contracts had provisions for early termination which provided for compensation for financing costs incurred in constructing the barns. The court also dismissed the claims for breach of implied covenant of good faith and fair dealing because the contracts had express clauses dealing with termination of the contracts. The court upheld the action under Minn. Stat. § 17.92 which prohibited the termination of agricultural commodity production contracts without 180 days prior notice in writing and reimbursement for damages incurred by the producer's investment. The court allowed evidence for damages only as to the construction of the poultry barns and not for the costs of operating the barns or lost profits. **Crowell v. Campbell Soup, Nos. 99-3404, 99-3520 (8th Cir. Sept. 6, 2001)**.

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has issued proposed regulations amending the brucellosis indemnity regulations to allow indemnity payments for sheep, goats, and horses destroyed because of brucellosis. **61 Fed. Reg. 47593 (Sept. 13, 2001)**.

CROP INSURANCE. The FCIC has issued interim regulations amending the procedures for the submission of policies, plans of insurance, or other rates or premium by insurance companies, or other persons or entities, to the FCIC Board of Directors for approval for reinsurance and subsidy. **61 Fed. Reg. 47949 (Sept. 17, 2001)**.

SUGAR. The CCC has announced implementation of a sugar payment-in-kind diversion program to reduce the CCC's sugar inventory. **61 Fed. Reg. 47447 (Sept. 12, 2001)**.

WAREHOUSES. The FSA has issued proposed regulations revising the regulations administering the United States Warehouse Act to implement the provisions of the Grain Standards and Warehouse Improvement Act of 2000. The 2000 Act updates federal warehouse licensing operations, authorizes electronic warehouse receipts for all commodities, and authorizes the Secretary of Agriculture to establish regulations for voluntary systems for other electronic documents related to sales and transfers of agricultural products. **61 Fed. Reg. 47447 (Sept. 12, 2001)**.

FEDERAL ESTATE AND GIFT TAX

DISCLAIMERS. The decedent and spouse had established a trust for themselves and contributed community and separate property. The income interests were split between the grantors, depending upon whether the income came from community property or separate property. At the death of the decedent, the decedent's share of community property and separate property in the trust passed to the spouse in two trusts, a marital and residuary trust. The marital trust was based upon the amount necessary to reduce the decedent's estate tax to zero, with the remainder passing to the residual trust. The spouse was the trustee of these trusts. The spouse petitioned the state court to divide the marital trust into an exempt trust, for which a reverse QTIP election was made for GSTT purposes, and two non-exempt trusts. The spouse disclaimed any interest in one of the non-exempt trusts and the property passed under the trust provisions to the residuary trust which had the decedent's children as beneficiaries. The children agreed to reimburse the spouse for any gift tax resulting from the passing of property by the disclaimer. The IRS ruled that the spouse would not be deemed to have made a gift from the disclaimer, the spouse's interests in the trust would not be valued at zero under I.R.C. § 2702, and the payment of any gift taxes by the recipients of property from the disclaimer would reduce the value of the gift. **Ltr. Rul. 200137022, June 13, 2001**.

GIFTS. The decedent's predeceased spouse had made over $800,000 in payments to the spouse's personal secretary. The decedent's estate sought a refund of gift taxes paid on the transfers, arguing that the transfers were compensation rather than gifts. The court held that the payments were gifts because the spouse maintained a close personal relationship with the secretary, had made numerous gifts over the years and filed gift tax returns for the transfers. **Estate of Powell v. Comm'r, 2001-2 U.S. Tax Cas. (CCH) ¶ 60,416 (W.D. Va. 2001)**.

SETTLEMENTS. The taxpayer was the spouse of a person who orally contracted with two owners of a business to manage their business for life. The couple was alleged to have agreed to execute wills which would have the business property pass to the taxpayer after the death of both of the business owners. After the death of the first owner, the second owner fired the taxpayer's spouse and sold the business. The taxpayer sued the second owner for breach of contract and during that litigation the second owner died. The action was continued against the estate of the second owner. The estate settled with the taxpayer who sought a ruling that the settlement proceeds would not be included in gross income. The IRS characterized the taxpayer's action against the estate as a breach of contract action but ruled that the result favorable to the taxpayer would have caused property to pass by inheritance to the taxpayer; therefore, the settlement proceeds were considered as inherited property and excluded from income. The ruling contains little discussion of the central issue of whether the settlement proceeds represented property which would have passed under a will. The ruling statement of facts was unclear whether a will ever existed or whether the will contained a bequest of the property involved. It is also not clear whether the taxpayer's breach of contract action sought enforcement of a will bequest or merely alleged that the decedent failed to execute the will. It is also possible that the taxpayer's action alleged that the sale of the business property was the breach and this breach prevented the will bequest from occurring at the death of the owner. It would seem that the ruling would be incorrect if (1) no will existed, (2) no bequest was included in the will, or (3) if the breach was alleged to have been the sale of the property because the source of the settlement proceeds would be only from the breach of contract damages and not from any bequest, making the damages includible in gross income. The ruling appears to focus on what would determine the measure of damages, the amount of property which would have passed under the contracted-for will, and not the source of the cause of action, the breach of the contract. **Ltr. Rul. 200137031, June 15, 2001**.

TAX RATE. Commerce Clearing House has estimate that the gift tax annual exclusion amount for 2002 will increase to $11,000 due to adjustment for inflation. **News-Federal, 2001 Tax Day, 09/19/2001, Item #M**.

TRUSTS. The taxpayer was a trustee which incurred fees for its trust for investment strategy advice provided by private investment advisors and accounting, tax preparation, and management services. The court held that the fees were not deductible under I.R.C. § 67(e)(1) (allowing deductions less than or equal to two percent of adjusted gross income) because the fees "would not have been incurred if the property were not held in . . . trust." The appellate court affirmed. **Mellon Bank, N.A. v. United States, 2001-2 U.S. Tax Cas. (CCH) ¶ 50,621 (Fed. Cir. 2001), *aff'g*, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,153 (Fed. Cls. 2000)**.

VALUATION. The decedent had won a state lottery and, at the decedent's death was eligible for 17 more annual installment payments of the prize. Although the estate acknowledged that the remaining prize payments were included in the decedent's estate, the estate argued that the installments should be valued under a fair market test. The court held that, because the installments were subject to anti-assignment restrictions under state law, the installments were not to be valued using the actuarial tables of I.R.C. § 7520. **Estate of Shackleford v. United States, 2001-2 U.S. Tax Cas. (CCH) ¶ 60,417 (9th Cir. 2001), *aff'g*, 99-2 U.S. Tax Cas. (CCH) ¶ 60,356 (E.D. Cal. 1999).**

The decedent's estate included a 25 percent interest in a partnership. The estate had valued the interest using discounts for lack of marketability, lack of control, uncertain rights, and ownership of an undesirable mix of assets. Under Texas law and the partnership agreement, the decedent's death dissolved the partnership and the estate's interest in the partnership became an assignee's interest. The IRS argued that the discounts were not applicable because the estate had the right to a 25 percent interest in the liquidated partnership assets. The court held that, under Texas law, the other partners had the right to continue the partnership and pay the estate the value of the decedent's interest. The court held that the value of the decedent's interest under those circumstances would be the fair market value, determined using discounts for lack of marketability, lack of control, uncertain rights, and ownership of an undesirable mix of assets. On remand, the District Court held that the fair market value of the decedent's interest was entitled to a 20 percent discount for a minority interest, a 10 percent portfolio discount and a 35 percent discount for lack of marketability. **Adams v. United States, 2001-2 U.S. Tax Cas. (CCH) ¶ 60,418 (N.D. Tex. 2001), *on rem. from*, 218 F.3d 383 (5th Cir. 2000), *rev'g*, 99-1 U.S. Tax Cas. (CCH) ¶ 60,340 (N.D. Tex. 1999).**

VALUATION OF STOCK. The decedent owned 12,000 shares of stock in a bank corporation which had issued 100,000 total shares. The stock was not sold publicly but 1,100 shares were sold one month before the decedent's death. The court used that sale as evidence of the fair market value of the stock because the sale was arm's length and had no special circumstances. The court discounted the decedent's stock by 10 percent for the large block of shares, acknowledging that the shares could be sold in smaller blocks over time. The heir had sold the stock and, based upon the estate' valuation, calculated the capital gains tax on the sale. Because the Tax Court had valued the stock higher, the heir sought a refund of the capital gains tax from the sale of the stock; however, the limitation period on refunds had expired. The Tax Court allowed the heir to offset the additional estate tax against the income tax refund under the doctrine of equitable recoupment. The appellate court affirmed. **Estate of Branson v. Comm'r, 2001-2 U.S.Tax Cas. (CCH) ¶ 50,622, *aff'g*, T.C. Memo. 1999-231**.

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. The taxpayer had three businesses as an accountant, a wedding minister and a notary public. The taxpayer did not keep separate business records for any of the businesses except for cancelled checks. The court upheld all business deductions disallowed by the IRS for lack of substantiation. **Morin v. Comm'r, T.C. Summary Op. 2001-134**.

CASUALTY LOSS. The taxpayers owned a warehouse which was destroyed by a fire in 1993. The taxpayers filed an insurance claim which remained in dispute until 1995. The taxpayer rebuilt the warehouse in 1995 and sought to include the construction costs in the adjusted basis of the original warehouse for purposes of calculating the casualty loss. The court held that the amount of loss was limited to the adjusted basis of the original warehouse on the date of the casualty less any insurance recovery because the construction created a new property. Because the insurance recovery exceeded the taxpayers' basis in the old warehouse, no casualty loss was allowed. **Estate of Boyle v. Comm'r, T.C. Memo. 2001-235**.

COURT AWARDS AND SETTLEMENTS-ALM § 4.02[14].* The taxpayer agreed to a merger of the taxpayer's company with another company with an exchange of stock. The relations between the two parties soured and the taxpayer eventually sued the other company for fraudulent inducement to enter into a contract and interference with a business relationship. The taxpayer received jury awards for both claims plus prejudgment interest. The Tax Court initially held that the jury awards for the claims and the prejudgment interest were included in the taxpayer's gross income but that decision was reversed. On remand, the Tax Court again held that the taxpayer presented no evidence of personal injury and no evidence that the jury award was intended as compensation for personal injuries. **Gregg v. Comm'r, T.C. Memo. 2001-245, *on rem. from unpub. op*. (11th Cir. 2000), *rev'g*, T.C. Memo. 1999-10**.

DEPRECIATION. The taxpayer operated a farm and manufactured meat and food products. The taxpayer provided a wellness center for employees, had kitchens used to test food products and operated distribution centers. The taxpayer treated all of the assets as five year property under asset class 57.0, Distributive Trades and Services. In a Chief Counsel Advice letter, the IRS ruled that this was not correct because the taxpayer was not in the food testing or food distribution business and was not in the business of providing employee wellness centers. The IRS ruled that the taxpayer was in the farming and manufacturing businesses and had assets in either asset class 01.1 Agriculture with a class life of 10 years or class 20.4 Manufacture of Other Food and Kindred Products with a class life of seven years. The IRS ruled assets in the kitchens and distribution centers were part of the manufacturing business and had a class life of seven years. The wellness centers were associated either with the farming business or manufacturing business depending upon the primary use. **CCA Ltr. Rul. 200137026, June 14, 2001**.

DISASTER PAYMENTS. On September 11, 2001, the President determined that certain areas in New York were eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of fires and explosions on September 11, 2001. **FEMA-1391-DR**. On August 27, 2001, the President determined that certain areas in Ohio were eligible for assistance under the Act as a result of severe storms and flooding on July 17-18, 2001. **FEMA-1390-DR**. On September 12, 2001, the President determined that certain areas in Virginia were eligible for assistance under the Act as a result of fire and explosions on September 11, 2001. **FEMA-3168-EM**. Accordingly, a taxpayer who sustained a loss attributable to the disasters may deduct the loss on his or her 2000 federal income tax return.

DISCHARGE OF INDEBTEDNESS. The taxpayer, a partnership, owned a commercial building subject to a mortgage and loan from a creditor. In 1993, the taxpayer and creditor executed a "covenant not to sue" in exchange for transfer of the title to the property to the creditor. The title to the property was not transferred until 1994. The court held that the discharge of indebtedness from the transfer occurred in 1994 when the title to the property was transferred. **Lowry v. Comm'r, T.C. Memo. 2001-238**.

The taxpayer was a shareholder in a bank corporation which had loaned money to a corporation owned in part by the taxpayer's son. The son was a guarantor on the corporation's loan. When the corporation's loan became undersecured, the bank negotiated with the corporation and the taxpayer for reduction of the loan and release of the son as guarantor in exchange for the debtor's stock in the bank. The IRS argued that the taxpayer realized gain on the transfer of the stock in exchange for the loan reduction. The court held that the taxpayer did not realize gain from the transfer because only the corporation received the benefit of the loan reduction. **Friedland v. Comm'r, T.C. Memo. 2001-236**.

EARNED INCOME TAX CREDIT. The taxpayer owned a condominium and three commercial properties which were rented to third parties. The taxpayer did not include the rental income in self-employment income and argued that the taxpayer was not in the real estate rental business. The court held that the rental income was not qualified income for earned income tax credit purposes because the income was not included in self-employment income. **Holbrook v. Comm'r, T.C. Summary Op. 2001-135**.

IRA. The taxpayer had rolled over funds from employment pension funds to a personal IRA in 1992. The funds represented before and after tax income. In 1995, the taxpayer received a distribution from the IRA which was used for education and personal expenses. The court held that the entire distribution was subject to the early withdrawal penalty. **Machen v. United States, 2001-2 U.S. Tax Cas. (CCH) ¶ 50,606 (Fed. Cls. 2001)**.

INSTALLMENT REORTING. The taxpayer purchased a residence in 1993 and in 1995, sold a joint tenancy interest to a third party in exchange for a note requiring monthly payments for ten years and a balloon payment at the end of ten years. The taxpayer realized $145,000 of gain on the sale. The taxpayer filed a tax return by mailing the return on the extension due date in an envelope stamped by a private postage meter showing that date. The return did not reach the IRS until six days later. According to the U.S. Postal Service's publications, the normal delivery time was three days. The return claimed the exclusion for sale of a residence, even though the taxpayer did not qualify for the exclusion because the taxpayer did not live in the residence for three years before the sale. The return also reported all of the gain from the sale. The taxpayer argued that the return did not contain an election out of the installment method because the return was not received by the extension due date. The IRS argued that the return was timely filed because it was mailed on the extension due date. The court held that, under Treas. Reg. § 301.7502-1(c)(1)(iii)(B), because the return was not delivered within the normal delivery time, the return could not be considered as timely filed; therefore, no valid election out of the installment method was made. **Bokman v. Comm'r, T.C. Summary Op. 2001-137**.

INTEREST RATE. The IRS has announced that, for the period October 1, 2001 through December 31, 2001, the interest rate paid on tax overpayments is 7 percent (6 percent in the case of a corporation) and for underpayments at 7 percent. The interest rate for underpayments by large corporations is 9 percent. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 is the federal 4.5 percent. **Rev. Rul. 2001-47, I.R.B. 2001-39**.

LIKE-KIND EXCHANGES. The taxpayer owned 98 percent of a partnership and the taxpayer's son owned 2 percent of the partnership. The partnership owned real property contributed by the taxpayer and used by the partnership for its business. The son owned an S corporation which owned other similar property. The corporation and partnership exchanged the business properties which the IRS ruled were like-kind properties. The partnership moved its business to the new property but all of the parties began to liquidate all the properties. The partnership's original property was sold, optioned or donated to a charity a little more than two years after the exchange. In a Chief Counsel Advice letter, the IRS ruled that the exchange occurred between related parties but, because the exchanged property was disposed of more than two years after the exchange, the recognition rule of I.R.C. § 1031(f)(1) did not apply to require recognition of the gain from the original exchange of properties. **CCA Ltr. Rul. 200137003, May 10, 2001**.

PARTNERSHIPS-ALM § 7.03.*

FAILURE TO FILE PENALTY. In a Chief Counsel Advice letter, the IRS has ruled that the IRS could change its administrative procedures to give notice to small partnerships that they may be entitled to abatement of the I.R.C. § 6031 penalty for failure to file a return. The notice form would contain the following questions:

1. Is the partnership a domestic partnership?
2. Does the partnership have 10 or fewer partners? (husband and wife and their estate are treated as one partner)
3. Are all partners natural persons (other than a nonresident alien) or an estate of a deceased partner?
4. Is each partner's share of each partnership item the same as his share of every other item?
5. Have all the partners timely filed their income tax returns?
6. Have all the partners fully reported their share of the income, deductions, and credits of the partnership of their timely filed income tax returns?

If the partnership answers yes to all the questions and all partners sign the form, the IRS would abate the penalty. **CCA Ltr. Rul. 200135029, Aug. 1, 2001**.

PENSON PLANS. The IRS has issued guidance relating to the effective dates for §§ 611(c), 613, and 636(a) of the Economic Growth and Tax Relief Reconciliation Act of 2001. Section 611(c) of EGTRRA increases the compensation limit of I.R.C. § 401(a)(17) and related sections. Section 613 of EGTRRA modifies the rules in I.R.C. § 416 regarding determination of top-heavy status. **Notice 2001-56, I.R.B. 2001-38**.

The IRS has issued sample plan amendments for the changes to the plan qualification requirements under I.R.C. § 401(a) that were made by the Economic Growth and Tax Relief Reconciliation Act of 2001. These sample amendments are designed to help plan sponsors and sponsors and adopters of pre-approved plans to comply with the requirement to adopt good faith EGTRRA plan amendments on a timely basis. **Notice 2001-57, I.R.B. 2001-38**.

The taxpayer was a corporation which provided an ESOP for its employees. The taxpayer purchased all of the stock of another corporation in 1987. The stock purchased resulted in the two corporations being defined as affiliated corporations under I.R.C. § 410 such that all of the second corporation's employees were considered the employees of the taxpayer. The total number of employees of both corporations was seven with only four employees covered by the taxpayer's ESOP. Because the percentage of covered employees was less than 70 percent of the total employees, the court held that the taxpayer's ESOP was no longer qualified. **Beal Bros. Management Corp. v. Comm'r, T.C. Memo. 2001-234**.

The taxpayer had provided an ESOP to employees as part of a federal program to financially rescue the company. Several years later as part of a collectively bargained employment contract, the taxpayer agreed to terminate the ESOP and redeem shares in the program for those employees who elected to redeem their shares. The taxpayer claimed a business deduction for the costs of redeeming those shares. The court held that the redemption costs had to

**Agricultural Law Manual* (ALM).

be capitalized. **Chrysler Corp. v. Comm'r, T.C. Memo. 2001-244**.

REFUNDS. The IRS has issued a clarification regarding when a refund or credit of an overassessed tax is allowed. Pursuant to the clarification, references in *Rev. Rul. 78-127, 1978-1 C.B. 436*, to Form 1166, Voucher and Schedule of Payments, and other processing forms are removed. The ruling is further modified to state that Treas. Reg. § 301.6407-1 delegates scheduling authority of an overassessment to a certifying officer and that the date the summary record of assessment is signed and the date on which the schedule of overassessments is signed are the dates of authorization for a credit or refund. **Rev. Rul. 2001-40, I.R.B. 2001-38, 276**.

The taxpayer attempted to file a claim for refunds for three tax years as a result of carryback losses. The taxpayer presented evidence that the return was placed in an envelop stamped by a private postage meter. There was no evidence presented that the IRS ever received the refund claim. The taxpayer argued that the timely mailing of the return was sufficient to consider the refund claim as timely filed. The court held that the "mailbox rule" did not apply because there was no evidence that the return was received by the IRS. **Cardinal Textile Sales, Inc. v. United States, 2001-2 U.S. Tax Cas. (CCH) ¶ 50,630 (N.D. Ga. 2001)**.

The taxpayer filed a claim for refund in 1997 for 1990, 1991, and 1992 based upon carryback of net operating losses from 1993. The court held that it had no jurisdiction over the claim because the claim for refund was not filed within three years after the due date for the 1993 return. **G of L Corp. v. United States, 2001-2 U.S. Tax Cas. (CCH) ¶ 50,625 (D. Nev. 2001)**.

RETURNS. The IRS and Financial Management Service have announced that businesses and individuals can now pay their taxes on the internet using the Electronic Federal Tax Payment System Online (EFTPS). Businesses and individuals can enroll for EFTPS-OnLine via the Internet, using a user-friendly web interface: http://www.eftps.gov After enrollment, taxpayers will receive a confirmation kit by mail with instructions for obtaining an internet password. A unique Personal Identification Number will be mailed separately, to new EFTPS users, for added security. Businesses with over $200,000 in annual tax payments are required to use EFTPS. **IR-2001-77**.

The IRS has announced that the due date for all federal tax obligations falling between September 10, 2001, and September 24, 2001, is postponed to September 24, 2001 for taxpayers who, regardless of their location, continue to experience difficulties in meeting their filing and tax payment requirements due to events related to the September 11, 2001, terrorist attack on the United States. **Notice 2001-63, I.R.B. 2001-40**.

The IRS has also announced that it will suspend for six months enforcement activities such as levies, seizures and summonses for affected taxpayers. Although the IRS is not extending the deadline for employment or excise tax deposits, it will provide relief for businesses unable to make deposits because of the terrorist attacks. In addition, the IRS will waive penalties on tax deposits required to be made by such businesses between September 11, 2001 and October 31, 2001 if the deposits are made by November 15, 2001. **Notice 2001-61, I.R.B. 2001-40**.

The IRS has announced the list of designated private delivery services, effective September 1, 2001. **Notice 2001-62, I.R.B. 2001-40**.

SAFE HARBOR INTEREST RATES
October 2001

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	3.58	3.55	3.53	3.52
110 percent AFR	3.95	3.91	3.89	3.88
120 percent AFR	4.31	4.26	4.24	4.22
		Mid-term		
AFR	4.59	4.54	4.51	4.50
110 percent AFR	5.05	4.99	4.96	4.94
120 percent AFR	5.52	5.45	5.41	5.39
		Long-term		
AFR	5.39	5.32	5.29	5.26
110 percent AFR	5.94	5.85	5.81	5.78
120 percent AFR	6.48	6.38	6.33	6.30

Rev. Rul. 2001-49, I.R.B. 2001-__.

TRUSTS. The taxpayers operated a computer consulting business and transferred their residence to a trust which was the beneficiary of another trust to which the taxpayers transferred their consulting business. The taxpayers continued to supply all the services which generated the income for the business and continued to treat the assets as their own. The court held that the trusts were shams and the consulting business income was considered self-employment income to the taxpayers. **Caralan Trust v. Comm'r, T.C. Memo. 2001-241**.

SECURED TRANSACTIONS

LABORER'S LIEN. The debtor hired two people to provide and drive semi-trucks to transport potatoes to a transporter and on to a cellar. Another person provided a dump truck to haul dirt from the transporter back to the farm. The dump truck was driven by whomever was available, including the person who provided the truck. The semi drivers also helped with the working of the transporter while waiting for a load to drive to the cellar, but those activities were provided without compensation. The three people filed farm labor liens under Idaho Code § 45-303 when it became clear that they were not going to be paid by the debtor. The creditors with security interests in the potato crop objected to the liens, arguing that the three people were not farm laborers under the statute because they did not provide labor on the farm. The court held that the two semi-truck providers/drivers were farm laborers because their operation of the trucks provided personal services essential to the production, harvest and storage of the potato crop. The trucks were held to be similar to the use of horses on a farm to accomplish the harvest tasks; thus, the liens for the drivers' compensation and the use of the trucks was entitled

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to priority under the statute. However, the court held that the lien securing the rental of the dump truck was not entitled to priority under the statute because the mere rental of equipment was not labor. The court found that the services provided by the truck owner were voluntary and only incidental to the truck rental; therefore, there were no personal services provided with the dump truck. ***In re* Residential Ag, Inc., 264 B.R. 674 (Bankr. D. Idaho 2001)**.

STATE TAXATION

VALUATION. The plaintiff owned a one acre homestead which was valued at $8,000 for real property tax purposes. the valuation was based on six comparable sales. The plaintiff argued that the land should have been valued separately from the house and that the septic system and well were part of the house. The court held that the property was valued correctly as agricultural homestead because that was the property's highest and best use. The court also held that the well and septic system were part of the land and the land value was appropriately adjusted for the age and condition of the well and septic system. The plaintiff failed to provide any other evidence to support the plaintiff's claim that the property was worth only $300. The plaintiff provided summaries of 84 other properties but failed to provide adjustments for differences among the properties. **Weed v. County of Fillmore, 630 N.W.2d 419 (Minn. 2001)**.

IN THE NEWS

HERBICIDES. An Oklahoma jury has awarded nine Oklahoma farmers $1,487,835 in damages for loss of crops from mislabeled herbicide. The defendant was a supplier and distributor of farm chemicals.

PRICE FIXING. Twenty-two states, Puerto Rico and the District of Columbia have joined in a suit against three European and three Japanese companies for price fixing vitamins used in animal feed, cereals and bread. See http://www.vitaminlitigation.com or call 1-800-424-6662 for more information.

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